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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/717,729 | 11/20/2003 | Roger L. Stolte | 1149.1101101 | 8697 |
| 164 | 7590 | 09/25/2006 | EXAMINER | |
| KINNEY & LANGE, P.A. THE KINNEY & LANGE BUILDING 312 SOUTH THIRD STREET MINNEAPOLIS, MN 55415-1002 | | | DOUYON, LORNA M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1751 | |

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/717,729

Applicant(s)

STOLTE ET AL.

Examiner

Lorna M. Douyon

Art Unit

1751

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

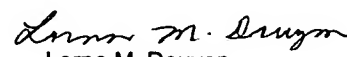
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1-69.
Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.


Lorna M. Douyon
Primary Examiner
Art Unit: 1751

Continuation of 5. Applicant's reply has overcome the following rejection(s): objection to claims 1, 7, 33, 34, 36, 38 and 44 for minor informalities.

Continuation of 11. does NOT place the application in condition for allowance because of the following reasons:

With respect to the obviousness rejection of claims 1, 5-9, 11-18, 21, 22, 34, 36, 38, 42-46, 48-55, 58 and 59 based upon Curry, Applicants argue that although Curry may disclose compositions that, at some point, include both HEDTA and water, Curry does not show, teach or suggest a solid binding agent that includes both HEDTA and water. Applicants also argue that the granular compositions of Curry are formed via a spray drying process that would presumably remove the water required to form the claimed solid binding agent. Applicants also argue that the solid binding agent is free of carbonate and, although Curry does not require the presence of carbonate, it is noted that Curry teaches preferred granular compositions including a significant amount of carbonate (col. 9, lines 25-35; col. 12, line 23).

The Examiner respectfully disagrees with the above arguments because the spray drying of a water slurry comprising HEDTA and water to provide a granular detergent composition of Curry still comprises HEDTA and water (see Example III in col. 12, line 11-28). Because there is still water remaining after spray drying and the granular composition comprises HEDTA, it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the HEDTA to cooperate with the water to form a binding agent. In col. 2, lines 48-51 and claim 6, Curry teaches a composition comprising from 0% to about 75% by weight of inorganic detergency builder selected from the group consisting of alkali metal silicates, alkali metal carbonates and mixtures thereof. Since the minimum amount of builder is 0%, builders which may include the carbonates need not be present in the composition. Even assuming, a builder is used, it may not necessarily be the carbonate, the builder can just be the silicates. Furthermore, nonpreferred embodiments can be indicative of obviousness, see *Merck & Co. v. Biocraft Laboratories Inc.* 10 USPQ 2d 1843 (Fed. Cir. 1989); *In re Lamberti*, 192 USPQ 278 (CCPA 1976); *In re Kohler*, 177 USPQ 399.

With respect to the rejection of claims 19-20 and 56-57 based upon Curry as applied to the above claims further in view of Magari, Applicants argue that since these claims are dependent upon claim 1 which is in condition for allowance in view of the arguments above, these claims should be withdrawn.

The response to Curry above apply here as well. Hence, the rejection based upon Curry in view of Magari is maintained.

With respect to the rejection of claims 1-11, 13, 15-28, 30, 32-48, 50, 52-65, 67 and 69 based upon Steindorf, Applicants argue that although Steindorf may disclose compositions that, at some point, include both HEDTA and water, Steindorf does not show, teach or suggest a solid binding agent that includes both HEDTA and water. Applicants also argue that while Steindorf does teach a detergent composition comprising free water and water of hydration, the amount of free water is not mentioned other than to state that it is employed to facilitate processing and solidification (col. 3, lines 62-63).

The Examiner respectfully disagrees with the above arguments because it is clear from col. 3, lines 38-42 and col. 5, lines 38-41 that the composition comprises HEDTA and water, hence, it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the HEDTA to cooperate with the water to form a binding agent.

With respect to the rejection of claims 12, 14, 29, 31, 49, 51, 66 and 68 based upon Steindorf as applied to the above claims further in view of Rolando, Applicants argue that since these claims are dependent upon claim 1 which is in condition for allowance in view of the arguments above, these claims should be withdrawn.

The response to Steindorf above apply here as well. Hence, the rejection based upon Steindorf in view of Rolando is maintained.